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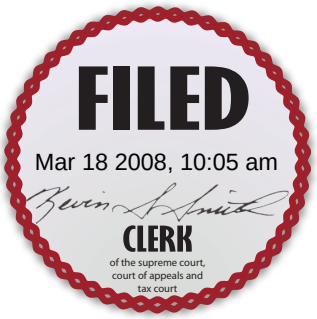

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IN THE COURT OF APPEALS OF INDIANA

JULIE CURRY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0707-CR-386
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUEPRIOR COURT
The Honorable Heather Welch, Judge
Cause No. 49F09-0508-FD-148190

March 18, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Julie Curry ("Curry") was convicted in Marion Superior Court of Class D felony operating a vehicle while intoxicated. Curry appeals and claims that the trial court erred in denying her motion to suppress evidence which she claims was obtained by an impermissible investigatory stop. We affirm.

Facts and Procedural History

Early in the morning of August 30, 2005, Marion County Sheriff's Deputy Robert McNeil ("Deputy McNeil") was in his patrol car driving east on Pendleton Pike approaching I-465. As he approached the intersection, Deputy McNeil saw a truck, later determined to be driven by Curry, in the westbound lanes of Pendleton Pike. Specifically, the truck was in the left-hand turn lane preparing to turn onto southbound I-465. The truck was angled so that it took up both turn lanes, and the front of the truck was protruding into the intersection up to the driver's side door. The traffic light facing Deputy McNeil's direction was green, so he proceeded on through the intersection. Deputy McNeil saw in his rearview mirror that the light for Curry's truck was red. Concerned that there might be a mechanical or even a medical problem, and noting that the truck was protruding into the intersection, Deputy McNeil made a U-turn and pulled up behind Curry's truck with his emergency lights activated.

Deputy McNeil exited his patrol car, approached the driver's side door of the truck, and saw Curry in the driver's seat. Deputy McNeil asked Curry if there was anything wrong and if there was a reason her truck was protruding into the intersection. Curry responded that she had been waiting for a green light for a while, but the light had not yet changed, so she inched her truck forward into the intersection hoping to get the

light to change. As he spoke with Curry, Deputy McNeil noticed the smell of alcohol coming from Curry. He also saw that Curry's eyes were watery and bloodshot and that Curry's speech was slurred. Curry told Deputy McNeil that she was coming from a bar on Pendleton Pike where she had drunk "three beers and one shot." Tr. p. 51. Suspicious that Curry was drunk, Deputy McNeil called Deputy Anthony Patza ("Deputy Patza") to assist him. While waiting for Deputy Patza to arrive, Deputy McNeil had Curry undergo the horizontal gaze nystagmus field sobriety test, which she failed.

When Deputy Patza arrived, he too noticed that Curry smelled of alcohol and had watery, bloodshot eyes. Deputy Patza administered two field sobriety tests, which Curry passed. Still suspicious that Curry was intoxicated, Deputy Patza administered a portable breath test to Curry. Based upon the results of this test, Deputy Patza informed Curry of her rights under Indiana's implied consent law. Curry then consented to a chemical breath test which revealed that she had an alcohol concentration of .10 gram of alcohol per 210 liters of breath.

On August 30, 2005, the State charged Curry as follows: Count I, operating a vehicle while intoxicated as a Class A misdemeanor; Count II, operating a vehicle while intoxicated as a Class D felony; Count III, operating a vehicle with an alcohol concentration of between .08 and .15 as a Class C misdemeanor; Count 4, operating a vehicle with an alcohol concentration of between .08 and .15 as a Class D felony; and Count 5, public intoxication as a Class B misdemeanor. On November 28, 2006, Curry filed a motion to suppress, claiming that the police stopped her without reasonable suspicion. After a hearing held on December 13, 2006, the trial court denied the motion.

At the jury trial held on April 11, 2007, Curry objected to the admission of the evidence she claimed was obtained as a result of an improper stop. The trial court overruled this objection. At the conclusion of the trial, the jury found Curry guilty on Count III. Curry then pleaded guilty to Count IV, which enhanced her conviction on Count III to a Class D felony. The jury found her not guilty on the remaining counts. Curry now appeals.

Discussion and Decision

Although Curry frames her appeal as being from the denial of a motion suppress, she appeals following a completed bench trial. Thus, the issue is more appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial. Widduck v. State, 861 N.E.2d 1267, 1269 (Ind. Ct. App. 2007). Our standard of review of rulings on the admissibility of evidence is essentially the same whether the challenge is made by a pre-trial motion to suppress or by trial objection: we do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court's ruling and the uncontested evidence favorable to the defendant. Id.

Here, Curry claims that the Deputy McNeil had no reasonable, articulable suspicion justifying her detention. See Wells v. State, 772 N.E.2d 487, 489 (Ind. Ct. App. 2002) (noting that under Terry v. Ohio, 392 U.S. 1 (1968), a police officer may stop a person to investigate possible criminal behavior without the probable cause required for an arrest if they have a reasonable and articulable suspicion that the person has been, is, or is about to break the law). The State responds by arguing that the initial encounter between Curry and Deputy McNeil was consensual, and that after talking to Curry, Deputy McNeil had, at the least, reasonable suspicion that Curry was intoxicated. We

agree with the trial court, however, that even if Deputy McNeil's initial encounter with Curry was an investigatory stop requiring reasonable suspicion, Deputy McNeil had a reasonable suspicion that Curry was violating traffic ordinances.

Curry's truck was at a red light and protruding into the intersection up to the driver's side door. Her truck was also positioned such that it blocked both left-hand turn lanes. Upon seeing this, Deputy McNeil had a reasonable suspicion that Curry was violating traffic ordinances. See State v. Quirk, 842 N.E.2d 334, 340 (Ind. 2006) (holding that police officers may stop a vehicle when they observe minor traffic violations); Ind. Code § 9-21-3-7(b)(3)(A) (2004) ("vehicular traffic facing a steady circular red signal alone shall stop at a clearly marked stop line. However, if there is no clearly marked stop line, vehicular traffic shall stop before entering the crosswalk on the near side of the intersection. If there is no crosswalk, vehicular traffic shall stop before entering the intersection and shall remain standing until an indication to proceed is shown."). Therefore, even if we consider Deputy McNeil's initial encounter with Curry as an investigatory stop, he had an articulable, reasonable suspicion justifying a stop.

Once Deputy McNeil stopped Curry, he observed that she smelled of alcohol, had slurred speech, and watery, bloodshot eyes. This gave him probable cause to believe that Curry was intoxicated. See Frensemeier v. State, 849 N.E.2d 157, 162 (Ind. Ct. App. 2006) (the amount of evidence needed to establish probable cause of operating while intoxicated is minimal and the odor of alcohol on the driver's breath can be sufficient), trans. denied.

Under these facts and circumstances, we cannot say that the actions of the police were in violation of either the Fourth Amendment or Article 1, Section 11 of the Indiana Constitution. See Frensemeier, 849 N.E.2d at 162; Quirk, 842 N.E.2d at 334. The trial court therefore properly denied Curry's motion to suppress and properly admitted evidence obtained from Curry's encounter with Deputy McNeil.

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.